



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

151508	03/15/98	11/13/97	1	ATTY. DOCKET NO.
--------	----------	----------	---	------------------

MICHAEL EBERT
HOPGOOD, CALIMAFDE, KALLI, CLARSTEIN
JUDLOWE
60 E. 42ND STREET
NEW YORK NY 10165

EXAMINER

SYKES, A

ART UNIT PAPER NUMBER

3311

7

DATE MAILED:

01/13/97

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

- ☒ Responsive to communication(s) filed on 9-7-95
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-7 is/are pending in the application.
- ☐ Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-7 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1-7 are rejected under 35 U.S.C. § 103 as being unpatentable over Anderson in view of Dardik. The Anderson reference discloses a method of rehabilitation and conditioning in which a series of successive exercise sessions are conducted over time. During the performance of the exercise protocol, physiological and psychological variables are measured. One of the physiological variables which can be measured is pulse rate. Changes in the variables are monitored to provide the basis for modification of the exercise protocol. The Dardik reference discloses a rhythmic technique in which an individual repetitively exerts and relaxes. It would have been obvious to one skilled in the art in view of the Dardik teaching to use the Anderson technique to perform the exercise-relaxation cycles and continuously monitor heart rate to condition the subject to achieve a normal range of heart rate.

Applicant's arguments with respect to claims 1-7 have been considered but are deemed to be moot in view of the new grounds of rejection.

Serial Number: 08/151,508
Art Unit: 3311

-3-

Any inquiry concerning this communication should be directed to A. Sykes at telephone number (703) 308-2713.

ads

January 2, 1997

A handwritten signature in cursive script that reads "Angela D. Sykes".

**ANGELA D. SYKES
SUPERVISORY PATENT EXAMINER
GROUP 3800**